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OCT 10 1932
CLERK SUPREME COURT
U.S.

No. 424

In the Supreme Court of the United States

OCTOBER TERM, 1932

WALKER WOOD, SECRETARY OF STATE, OF STATE OF MISSISSIPPI, Appellant

vs.

STEWART C. BROOM, Appellee

BRIEF FOR APPELLEE

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BRIEF FOR APPELLEE

STATEMENT OF CASE

This is a suit by the appellee, based on the 14th clause of *Section* 41, of *Title* 28, of the *United States Code Annotated,* which provides that this Honorable Court shall have jurisdiction; "Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation under color of any law, statute, ordinance, regulation, custom, or usage of any state, of any right, privilege or immunity secured by the Constitution of the United States, or any right secured by any law of the United States, providing for equal rights of citizens of the United States or of all persons within the jurisdiction of the United States."

And as to the Appellee in this case the jurisdiction of this Honorable Court is placed squarely on this Conference of jurisdictional power. The bill seeks to have this court declare the act of the Legislature of the State of Mississippi, known as Chapter 197, Laws of 1932, known

as the Redistricting Bill, redistricting the State of Mississippi into seven congressional districts, void and invalid, as being in violation of Article 1, Section 4 of the Constitution, the Fourteenth Amendment thereof, and the Act of Congress of August 8, 1911, and of Section 3 of Chapter 5 thereof, reading as follows: "*In each state entitled under this apportionment to more than one representative, the representative to Congress shall be elected by districts composed of a contiguous and compact territory and containing as near as practicable an equal number of inhabitants.. The said districts shall be equal to the number of representatives to which such state may be entitled in Congress, no district electing more than one representative.*" And the Mississippi redistricting act being in violation of the Federal statute and Constitution deprives the appellee of the fundamental guaranteed rights of equality of representation among the citizens and inhabitants of Mississippi and other citizens and inhabitants of the United States in the national Congress, and of his civil right as guaranteed by the law and Constitution.

The Mississippi redistricting act denies equal representation and does not arrange the congressional districts compactly, contiguously and of as nearly equal number inhabitants as practicable, and appellee therefore denies its validity.

STATEMENT OF FACTS

Under the old census Mississippi was allotted eight congressmen. Under the last census it was allotted seven. It, therefore, became necessary that the State of Mississippi be divided into seven congressional districts instead of eight.

At the 1932 session, the State Legislature, as charged in the bill, and admitted by the answer, used no discretion or judgment in redistricting said State, and passed what is known as House Bill 197, under which, as set out in the bill herein filed, the populations of the various districts

ranged from 184,266 in the Fourth District to 416,301 in the Seventh District. The population of the various Districts as fixed by House Bill 197 being:

First District	241,605
Second District	219,661
Third District	420,969
Fourth District	184,266
Fifth District	244,562
Sixth District	284,457
Seventh District	416,301

The Third and Fourth Ditricts contain 42 per cent of the total population of the State and the other five Districts contain 58 per cent of the total population.

Appellee is a citizen of the Seventh District.

The total population of the State is 2,011,781 and the proper ratio between the several Districts is 287,397.

The Seventh District has 128,904 more than its ratio.

The Third District has 133,572 more than its ratio.

The First District has 45,974 less than its ratio.

The Second District has 67,736 less than its ratio.

The Fourth District has 103,171 less than its ratio.

The Fifth District has 42,835 less than its ratio.

The Sixth District has 2,940 less than its ratio.

No District under the new Mississippi redistricting act is composed of less than ten counties.

All the allegations in the bill of complaint are admitted by the answer filed.

The bill charges that the State of Mississippi is an agricultural state, comparatively level, with no natural obstructions or barriers, and that it is easily susceptible to division into seven contiguous and compact districts of a practically equal number of inhabitants. The bill and exhibits show the counties composing the various districts and the population thereof and the glaring injustice and inequality as between the districts is shown by the bill and exhibits.

In the hearing in the lower court it was admitted by appellants that the act of the Legislature of Mississippi did not conform to the requirements of the Act of Congress of August 8, 1911, and Article 1, Section 4 of the Constitution, as well as the Fourteenth Amendment to the Constitution, but appellant contended that it was a political and not a judicial question and Equity was powerless to grant relief.

We have nat seen appellant's brief, but we presume that it will be admitted in this court, as it was in argument in the lower court, that the Act of Congress of August 8, 1911, is constitutional and is the controlling law on the question.

An examination of the bill and exhibits will show that the act of the Mississippi Legislature in redistricting Mississippi violated two of the vital provisions of the Act of Congress above mentioned, in that (1) it did not regard the mandate for compactness, and (2) it disregarded the mandate for equality of population. And, as hereinbefore stated, it was admitted in the lower court that the said act of the Mississippi Legislature was invalid for these reasons.

On these facts the complainant and appellee seeks protection in the Federal Court of the right of equal representation guaranteed to him by the Constitution of the United States and the Act of Congress hereinbefore quoted.

LEGAL ISSUES

On the facts above stated, the following legal issues are presented:

(1) This is a judicial and not a political question, and complainant has the right to maintain this suit.

(2) Appellee having no adequate remedy at law in the Federal Court, a court of equity is the only court that can afford relief under the unconstitutionality of the said statute and protect the appellee's civil rights.

ARGUMENT

POINT I. JUDICIAL AND NOT POLITICAL QUESTION

We are concerned about the election of officers under the Federal Constitution and the Federal Statute for the election of members of the Federal Congress, and to say that this court has no jurisdiction of the matters laid in the bill is tantamount to saying that the State can with impunity deprive the citizens of an inherent civil property and constitutional right for a period of ten years and leave them stranded without remedy or relief.

In *Ragland v. Anderson,* 128 Am. St. Rep. 242 (Ky.), 125 Ky. 141; 100 S. W. 865, the court says: "Whenever a statute redistricting a state into districts makes the division so unequal as to violate the constitutional provision that such a division must be in proportion to the population is not so essentially a political question as to be beyond the jurisdiction of the court."

See also *Nixon v. Herndon,* 273 U. S. 536; 71 L. Ed 759.

In *Moran v. Bowley,* 179, N.E. 526, January, 1932, 347 Illinois 148, the court said: "The allegation of a bill to have a redistricting act declared unconstitutional and enjoin officers from expending public funds in carrying out

the provisions, held sufficient to constitute a taxpayers bill to enjoin misappropriation of public funds."

"Equity exercises jurisdiction at suits of taxpayers to enjoin public officers from unauthorized appropriations of public funds derived from taxation."

"*State Legislature in remapping state for congressional purposes must substantially comply with provisions of federal statutes* (2USCA, Sec. 2a and Secs. 2, 2 note, 3-5)."

"*Congressional apportionment cannot be sustained when voter in one district is given vastly more power than is given to voter in another district, especially where inequality extends to many districts* (2 USCA Sec. 2a, and Secs. 2, 2 note, 3-5)."

"*Legislature cannot in apportioning state for election of representatives to Congress pass laws effectually tending to disfranchise large number of voters.*" *Moran v. Bowley,* supra.

We submit that when under the present Mississippi act 416,301 inhabitants of the Seventh Congressional District have but one Congressman, and the 184,266 inhabitants of the Fourth Congressional District have a Congressman, that then the inhabitants of the Seventh Congressional District for all practical purposes are disinfranchised to the extent of more than fifty per cent, as compared with the Fourth Congressional District inhabitants.

In *Smiley v. Holm,* 76 L. Ed., p ....., Adv. Ops. 1931-1932, p. 600, it was held: "If there is no valid act to redistrict a state under the rules laid down by section 3, where there is a decrease in representatives, the election must be held from the state-at-large." Section 6277 of the Mississippi Code Annotated, 1930, is substantially as above, and concludes that, "If the number of representatives shall be diminished then the whole number shall be chosen by the electors of the state at large."

In the case of *Smiley v. Holm,* supra, this court further held as follows: "It follows that in such a case, unless and until new districts are created, all representatives allotted to the state must be elected from the state-at-large. That would be required in the absence of a redistricting act, in order to afford the representation to which a state is constitutionally entitled, and the general provisions of the act of 1911 cannot be regarded as intended to have a different import."

It must follow that as the act is conceded to be unconstitutional and Mississippi now has no congressional districts, there can be no nomination or election of Congressmen from imaginary districts.

With every power as extended by Congress to the states for redistricting purposes, *Congress reserves the right to supplement such regulations, substitute its own, impose additional penalties for violation of state laws. It has a general supervisory power over the whole subject, and in so doing Congress is making laws to be enforced by the people or by the courts and are not passing political resolutions.*

Ex parte *Siebold,* 100 U. S. 371, 25 L. Ed. 717; Ex parte *Yarbrough,* 110 U. S. 651, 28 L. Ed. 274; *U. S. v. Mosley,* 238 U. S. 383, 59 L. Ed. 1355; *Newberry v. U. S.,* 65 L. Ed. 913; *Smiley v. Holm,* supra; *Koenig v. Flynn,* 76 L. Ed., Adv. Ops. 1931-1932, p. 608, and *Carroll v. Becker,* 76 L. Ed. Adv. Ops. 1931-1932, p. 609; *Parker v. State,* 133 Ind. 178, 32 N. E. 119, 18 L. R. A. 567; *Ragland v. Anderson,* 125 Ky. 141, 100 S. W. 865, 128 Am. St. Rep. 242; *People v. Rice,* 135 N. Y. 473, 31 N. E. 921, 16 L. R. A. 836; *Harmisson v. Jefferson County,* 45 W. Va. 179, 31 S. E. 394, 42 L. R. A. 591; *State v. Cunningham,* 83 Wis. 90, 53 N. W. 35, 35 Am. St. Rep. 27, 17 L. R. A. 145; *Fletcher v. Tuttle,* 151 Ill. 41, 37 N. E. 683, 32 Am. St. Rep. 220; 25 L. R. A.

143; *State v. Wrightsman,* 56 N. J. L. 126, 28 Atlantic, 56, 22 L.. R. A. 548; *Martin v. McGarr,* 27 Okla. 653, 117 Pac. 323, 38 L. R. A. (N. S.) 1007; *Moran v. Bowley,* 179 N. E. 526; 347 Illinois 148.

As was said in the case of Ex Parte *Siebold,* supra, being an election case for the election of United States Congressmen, "*While the State will retain the power of enforcing its own regulations as are not superceded by those adopted by Congress, it can not be disputed that if Congress has power to make regulations it must have the power to enforce them* * *." Ex Parte *Siebold,* 100 U. S. at 387, 25 L. Ed. at 723.

POINT II. EQUITY JURISDICTION

In 9 R. C. L. page 1002-1003, under the chapter on election districts, and apportionments, we find the text: "*As a general rule the validity of an apportionment act involves a judicial question, which may be raised and determined in a Court of Equity, as well as in a Court of Law by mandamus; State v. Wright,* 58 New Jersey, 138; 22 L. R. A. 548; *State v. Cunningham,* 83 Wis. page 90, *Harrison v. Jefferson,* 54 W. Va. 179."

In 9 R. C. L., page 1006, Section 27: "*While the power of apportioning a state into representative districts is entrusted to the state legislature,* - - - - *this authority is not absolute, but is to be exercised in accordance with certain directions and limitations established by the same instrument which conveys the power and which ordinarily contemplates a division in accordance with certain directions or rules as to equality of population and territory.*"

In Pomeroy's Equity, 3rd Edition, Volume 1, page 260, it is said: "In a large number of states, the rule has been settled in well considered and oft repeated adjudication by courts of the highest character for ability and learning that

a suit in equity will be sustained when brought by any number of taxpayers jointly as co-plaintiffs or by one taxpayer suing on behalf of himself and others similarly situated.

Section 41 and paragraph 1, U. S. C. A., expressly provides that: "The foregoing provisions as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section," and in support of this, under paragraph 14, we cite *Swafford v. Templeton,* 185 U. S. page 492, Ex Parte *Yarborough,* 110 U. S. 651. In *Wylie v. Sinkler,* 179 U. S. page 58, *"The right to vote for members of the Congress of the United States is not derived merely from the Constitution and laws of the states in which they are chosen, but has its foundation in the Constitution of the United States, and the right to vote for congressmen is a right guaranteed and protected by the Constitution of the United States." And this is clearly shown in Ex Parte Yarborough,* 110 U. S., *in which the Court upheld a conviction in the Circuit Court of the United States for conspiracy to intimidate a citizen of the United States in the exercise of his right to vote for a member of Congress, and answers the fallacious argument that the right to vote for a member of Congress is not dependent on the Constitution and laws of the United States.*

Judge Rufus Foster, Circuit Judge in the lower court, whose opinion is attached as a part of the record of this cause, held that it was practicable to divide the State of Mississippi into seven compact and contiguous districts, with each district having approximately the same number of inhabitants. Secondly he holds that a right to vote for a representative in Congress is a right guaranteed by the Constitution of the United States, citing the *Mosely Case,* 238 U. S. 283, supra, and this right to vote implies a right to vote in a legal election. He further held that Section 3 of the Act of August 8, 1911, is mandatory, and must be followed by the State in fixing congressional districts, and the Mississippi Act is violative of the Act of

Congress and is illegal and void, and any election based upon the redistricting act will be illegal, and will deprive the voters of the state of the right guaranteed by the Constitution.

The lower court correctly held *upon the record and facts that the plaintiff has no remedy at law at all, and that an injunction in equity is the proper remedy, and the court of equity has jurisdiction regardless of the amount involved, or the violation of any right of property, to prevent invasion of the right of a citizen guaranteed to him by the Constitution.*

During the month of July, 1932, there was filed in the United States District Court in equity in Kentucky, a suit to declare the Kentucky Reapportionment statute under the last census unconstitutional and void. That case was decided by a three-judge court on August 6, granting the injunction which held the Kentucky statute unconstitutional, and the Kentucky State Court subsequently followed the decision. While this opinion has not yet been officially reported in the Federal Reporter, yet from a verified copy we cite the following holdings of that three-judge Court that portion of the opinion which applies to the points raised in this case is here appended at the end of this brief. In discussing "equity jurisdiction, the District Court of Kentucky said:

> "*In considering this question, two things must be accepted and kept in mind; one is that the plaintiff has the right to approximately equal representation in Congress, which right is secured to him by the Constitution and the statute law of the United States. The other is, that he has no adequate remedy at law in this court to vindicate such right or to redress its deprivation. He certainly could not successfully maintain a common law action for damages against the precinct election officers—because no act of theirs, either proximately or remotely, would deprive him of the*

*right asserted in this cause, * * * Unless, therefore, plaintiff can obtain relief in equity he is remediless so far as this court is concerned. It would seem that the very fact that one has a right secured by law which has been invaded and that he has no remedy at law to protect it, settles that he has such remedy in equity. In the case of Town of Beloit v. Morgan,* 7 Wall, 613, *it was said:*

> " 'The power is reserved to a court of equity to act upon a principle often mentioned, namely: that whenever there is a right, it ought to be made effective. 1 Kaime Prin. Eq. 3. Where there is a right which the common law, from any imperfection, cannot enforce it is the province and duty of equity to supply the defect and furnish the remedy. *Craig v. Stuyvesant,* 2 Paige, 92.'

"And in the cases of *Thompson v. Central Ohio RR.,* 6 Wall. 134, and *Payne v. Hook,* 7 Wall, 425, it was said:

> " 'The absence of a complete and adequate remedy at law, is the only test of equity jurisdiction.'

"The defendant's contention comes to this, that the federal wrong complained of is one that a federal court is powerless to right—a wrong which Section 41 (14) U. S. C. A. *presupposes that it has power to right in equity if not at law. The basis of the contention is that the right sought to be enforced by redressing its deprivation is a political right and a court of equity has no jurisdiction to enforce such a right, even though it cannot be enforced by law.*

"My view of the matter is that a political right may at the same time be a legal right. Such a right is a political matter. In case of such a right if it is invaded and there is no adequate remedy at law to protect it, equity has jurisdiction to do so.

"The defendant strongly urges that the case of *Giles v. Harris,* 189 U. S. 175, is conclusive authority for the position that a court of equity has no jurisdiction to enforce a legal right of a political nature. *As I view that decision it is an authority to the contrary of this. It upholds the position that a court of equity has such jurisdiction if there is no adequate remedy at law.*

" * * * * That there is nothing in the two statements of Mr. Justice Holmes relied on adverse to the position here taken and that the decision itself supports it is evident from two subsequent decisions of the Supreme Court in which Mr. Justice Holmes rendered the opinion. One of these decisions was in the case of *Love v. Griffith,* 266 U. S. 32.

"* * * The decree of the lower court was affirmed, because the question was moot and an injunction would have been worthless. It was not affirmed on the ground that plaintiff was not entitled to the equitable relief which he sought. On the contrary, Mr. Justice Holmes, who delivered the opinion said:

> " 'If the case stood here as it stood before the court of the first instance, it would present a grave question of constitutional law and we should be astute to avoid hindrance in the way of taking it up.'

"This expression leads me to believe that had the election not been held at the time the Supreme Court delivered its opinion the political nature of the controversy would not have been regarded by the court as an obstacle to the granting of equitable relief.

"The other decision was in the case of *Nixon v. Herndon,* 273, U. S. 536.

" * * * It was urged against the complaint that it was an action to enforce a political right. As to this Mr. Justice Holmes, who delivered the opinion of the court, said:

> " 'The objection that the subject matter of the suit is political is little more than a play upon words. Of course, the petition concerns political action, but it alleges and seeks to recover for private damage. That private damage may be caused by such political act and may be recovered for in a suit at law hardly has been doubted for over two hundred years.'

"It is true that that was an action at law. *But he cited in support of the decision not only the decision in Wiley v. Sinkler, which was a law case also, but that of Giles v. Harris, which was an equity one. He saw no difference in the right to enforce a legal right because it is of a political nature, between an action at law and a suit in equity. Why should it be of any significance in a suit in equity that the legal right sought to be enforced is of a political nature when it is of no significance in an action at law.*

" * * * The bill alleges that the Redistricting Act enacted by the last Legislature of this State deprives the plaintiff, a citizen and elector threof, of the right to approximately equal representation in Congress secured by Section 3 of the Act of 1911, and the act of defendant there sought to be enjoined will be performed under color of that statute. This suit is brought to redress that deprivation. It is brought to relieve plaintiff of it and to deliver him from it. *It is a suit in equity. And it is a 'suit authorized by law to be brought.'* In the meaning of the phrase may be met by the consideration that every suit to redress the deprivation of a right is authorized by law to be brought. Where there is a wrong there is a remedy.

If its meaning is 'authorized by statute to be brought', it is met by Section 43, Title 8, U. S. C. A., Rev. Stat. Sec. 1979, which is in these words:

> " 'Every person who under color of any statute, ordinance, regulation, custom or usage of any state or territory subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and laws shall be liable to the party injured in an action at law.'
>
> "The defendant under the color of the Congressional Redistricting Act enacted by the last Legislature of this State is about to take a step and unless enjoined will take it under color of that statute which subjects the plaintiff, a citizen of the United States, to the deprivation of his right to approximately equal representation in Congress secured to him by the federal Constitution and laws and a suit in equity against the defendant to enjoin her taking such step is a suit to redress such deprivation, i.e., to relieve of it and deliver him from it.
>
> "It would seem to be inescapable, therefore, as to the jurisdiction of this court as a Federal Court that the bill makes out a case. * * * " *Hume v. Mahon* (Decided in Federal three-judge court in Kentucky, Aug. 6, 1932, and not yet reported in Advance Sheets.)

The question involved in this case is not only the equal right of appellee to vote in a legal Congressional Election but his right of equal representation in Congress.

Appellee files his suit in three capacities, to-wit: as a citizen, as a tarpayer, and as a qualified elector.

The right to vote in a Congressional election is such a right as the Federal Courts will protect, and Appellee is, therefore, entitled to maintain this action.

Our Constitution provides that every citizen is entitled to the equal protection of the laws. In addition to this, Sec. 3 of the Act of Congress of August 8, 1911, provides that Congressional Districts shall contain as nearly as practicable an equal number of inhabitants. Nothing is said about electors nor any other class of citizens, but it is purely a question of the number of inhabitants.

Under this statute, equal representation is provided for all inhabitants, whether electors or not.

The Attorney-General of Mississippi, in his brief before the lower Court, cited a number of definitions of "civil" rights and "political" rights.

> "Political rights are those which may be exercised in the formation or administration of the government; the term 'rights' as used in this definition, being synonymous with 'power' ". *People v. Morgan,* 90 Ill. 558, 563.

> "Political rights consist in the power to participate directly or indirectly in the establishment or management of government. The elective franchise and the right to hold public office constitute the principal political rights of the citizens of the several states." *People v. Washington,* 36 Cal. 658, 662.

The two citations above are taken from the brief of the Attorney General and show that political rights are those rights or powers of citizens to participate in the establishment or formation of the government. They presuppose the doing of some act by the citizen, the doing of which would necessarily require him to be an elector.

> "A 'civil' right is a right accorded to every member of a district, community, or nation". *Winnet v. Adams,* 99 N. W. 681, 71 Neb. 817.

"The term 'civil' rights ordinarily means all those rights which the laws give a person, which depend upon the laws of the community in which he lives and of which he is a member." *Bowles v. Haverman*, 95 N. Y. 246, 247.

These definitions of civil rights are likewise taken from the brief of the Attorney General and, under them, a civil right is a right provided by law for every citizen and does not require the exercise by such citizen of any power nor does it require the doing of any act.

The guarantee of equal representation is, therefore, a right for the security of which no citizen is required to perform any act. He is not required to vote for it. Indeed he may not be qualified to vote, yet, our laws guarantee that right to him. It does not require him to participate in the formation of the government, nor does it require him to directly or indirectly participate in the administration of the government.

It is a right that stands guaranteed to him, regardless of his or anybody's political action.

This suit could be maintained by any citizen, whether he were a qualified elector or not, to protect his "civil right" of "Equal Representation."

Therefore the questions whether or not the power was exercised by the "legislature" within the meaning of Art. I, Sec. 4 (U. S. Const.), and whether the exercise of the power is within, or complies with, such federal constitutional provisions and statutory law, are *federal questions; and no decision by a state court can preclude this Court from determining these questions.* This Court has stated that when essential to the enforcement of rights asserted under the federal Constitution, it will review the decision of a state court.

Beidler v. So. Car. Tax Comm'n (1930), 282 U. S. 1, 51 Sup. Ct. 54, 75 L. Ed. 131.

Mitchell v. Clark (1884), 110 U. S. 633, 4 Sup. Ct. 170, 28 L. Ed. 279.

Carter v. Texas (1900), 177 U. S. 442, 20 Sup. Ct. 687, 44 L. Ed. 839.

Rogers v. Hennepin County (1916), 240 U. S. 184, 36 Sup. Ct. 265, 60 L. Ed. 594.

California v. Deseret Water Co. (1917), 243 U. S. 415, 37 Sup. Ct. 394, 61 L. Ed. 821.

Blodgett v. Silbermann (1928), 277 U. S. 1, 48 Sup. Ct. 410, 72 L. Ed. 749.

People v. Baldwin (1930), 341 Ill. 604, 174 N. E. 51.

It must necessarily follow that the right of the appellee to participate in the election of congressman from the State of Mississippi is a right to flow to him out of the constitution of the U. S. if he is a legal voter of the State of Mississippi, and that is confessed in the answer. Then, if this right of the appellee is guaranteed and protected by the constitution and since Congress, having entered the field, may alter or enact any law relative to federal elections as held in the *Seabold Case,* 100 U. S. Page 371, (Supra) then appellee's right extends to the right to participate in that sort and kind of an election for Congress as ordained shall be held in choosing its members, and it must follow from these decisions that the right extends to the elector to cast his vote in a district formed in contiguous and compact territory with practically an equal number of inhabitants and in a district where his vote will count and equal the vote of electors in every other district as nearly as practicable. The right of equality of representation is the bed rock upon which government is based, and it was the lack of equal representation that separated the colonists from the mother country and brought them to this land to obtain equal representation, equality of burden, equality of benefits, equality of taxation, as shown by the bill of rights. This principle is recognized by all the authorities and this view is discussed and sustained by the following authorities:

State v. Cunningham, 83 Wis. 90, 35 Am. St. Rep. 27, 53 NW 35, 17 LRA, 145; *Williams v. Secty. of State,* 144 Ind. 503, 42 NE 929, 31 LRA 126; *Harmison v. Ballot,* Com. 45 W. Va. 179, 31 SE 394, 42 LRA 591; *State v. Wrightson,* 56 NJL 126, 28 Atl. 56, 22 LRA 548; *Giddings v. Sec. of St.* 93 Mich. 1, 52 NW 944, 16 LRA, 402; *Parker v. State* 133 Ind. 178, 32 NE 836, 33 NE 119, 18 LRA 567; *Coms. v.Blacker,* 92 Mich. 638, 52 NW 951, 16 LRA 432; *State v. Cunningham,* 81 Wis. 440, 51 NW 724, 15 LRA, 561; *People v. Thompson,* 155 Ill. 451, 40 NE 307; *People v. Rice,* 185 N. Y. 473, 31 NE, 921, 16 LRA 836; *Baird v. Supervisors,* 138, N. Y. 95, 33 NE 827, 20 LRS 81.

It is suggested in the authorities quoted, and rightly so, that no citizen will or ought to love the state which oppresses him and denies him the equal protection of the law and a citizen who is deliberately and arbitrarily oppressed and denied equal representation with every other citizen of the state, can scarcely love and be loyal to the country which denies him such privilege right and immunities, and denies him the right to exercise all the rights and privileges that the laws allow him. To the extent to which the courts will review congressional redistricting acts of the state legislatures and holding that the apportionment act is not exclusive within the political power of the legislature as will preclude the courts from inquiring into the constitutionality of such statutes when the question is properly brought before the courts may be found in the following authorities: *Parker v. Powell,* 133 Ind. 178; *Denny v. State,* 144 Ind. 503; *Ragland v. Anderson,* 125 Ky. 141; *Attorney General v. Suffolk Co.* 224. Mass 198; *Giddings vs. Blacker,* 93 Mich. 1; *Baird vs. Hitchcox,* 141 Mo. 433; *Wayne v. Stoddard,* 25 Nev. 452; *Morris v. Wrighton* 56, NJL 126; *Biddell v. Crow,* 178 Pa. 234; *Thompson vs. Ballot* 45 W. Va. 179; *Atty-General vs. Cunningham,* 81 Wis. 440; *Woodyatt vs. Thompson,* 155 Ill. 451; *Williams vs. State,* 145, Mich. 448; *Neighen vs. Weatherhill,* 125 Minn. 336; *Hart v. Morehead,* 99 Neb. 527; *Bird v. King County,* 139 N. Y. 95; *Gallahan v. Campbell,* 48 Ohio, 435; *Warren v. Howell,* 92 Wash. 540.

Cases in which the requirement of equality of inhabitants where the Courts have held the rules laid down by congress violated may be found in the following authorities:

Woodyatt v. Thompson, 155 Ill, 451;

Carroll v. Becker, (Mo.) 45 SW (2nd) 494;

Moran v. Bowley (Ill.) decided Jan. 1932, NE Rep. Mar. 2nd, 526;

Brooks vs. State, 162 Ind. 568;

Ragland v. Anderson, 125 Ky. 141;

Suffolk County, supra, 124 Mass. 598;

Giddings vs. Blacker, supra, 93 Mich. 1;

Stevens vs. State, 181 Mich. 199;

Barrett vs. Hitchcox, supra, 145 Mo. 435;

State v. Morehead, supra, 95 Neb. 527;

Bird vs. King Co., supra, 138 N. Y. 95;

Re Dowling, 219, N. Y. 44;

Williams vs. Woods, (Tex.) 162 SW 1030;

Lamb vs. Cunningham, supra, 83 Wis. 90.

It is interesting to note that in *Grisby v. Harris,* 27 Federal 942, Second Series, Judge Hutchinson, in deciding the case, said, "I incline to think that those cases which have so uniformly affirmed the want of power in the court of equity to grant relief are *all cases* which either were or by the court deciding them held cases where plaintiff's rights were *only political* and, therefore, extralegal and that the political character of the subject matter of right could not prevent relief in equity, I think more reasonable. I incline to think with Justice Holmes that the objection that the subject matter of the suit is political is little more than a play on words."

We invite the attention of the Court to the dissenting opinion of Justice Cook in *Wood v. State* found in advance sheets Southern Reporter July 28, 1932, 142 So. 747 at page 754, which is a most able and exhaustive review of the authorities, and in line with the Federal decisions and the best considered state decisions.

CONCLUSIONS

The Act of Congress of August 8th, 1911, Sec. 3, Chapter 5, 37, Stat. at L. 13 U. S. C. title 2 No. 2 is still in force and is effective. See opinion of Justice Hughes in *Smiley v. Holm* (Supra). Therefore, we conclude that the Congressional Redistricting Act passed by the Legislature of Mississippi in 1932 is unconstitutional and void because it does not preserve compactness, or equality of representation, and thereby the rights of every inhabitant as fixed by the laws of Congress and guaranteed by the constitution to have his representative to Congress elected from compact and equally populated districts, is infringed and avoided. We further submit that such citizen or inhabitant may go in to the Courts of the United States and have his rights redressed in equity in the absence of an adequate remedy at law.

We respectfully submit that we are entitled to the relief prayed for in the bill, and that the decision of the three-judge court should be affirmed.

Respectfully submitted,

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APPENDIX

MISSISSIPPI STATUTES

Section 5877, Code, 1930—How Certain Expenses Paid. —All the expenses of printing the tickets or primary election ballots, and for necessary stationery, for paying the managers, clerks, bailiffs and returning officer of every primary election authorized by this chapter held in any county, shall be paid by the Board of Supervisors of such county out of the general funds of the county, but such officers of primary elections shall receive only such compensation as is authorized by chapter on Registration and Elections to be paid managers, clerks, bailiffs and returning officers for like services in holding elections thereunder; provided however, that this section shall not apply to the expenses of a primary election held by any political party which at the next preceding national presidential election did not vote as many as thirty-three and one third per cent of the total vote cast in the entire state.

Section 5899, Code, 1930.—Tabulated Vote to be Furnished Secretary.—The chairman of the State Senatorial and flotorial executive committees respectively shall transmit to the Secretary of State a tabulated statement of the party vote cast in each county in each state and district election, which statement shall be filed by the Secretary of State and preserved among the records in his office.

Section 6209, Code, 1930.—When General Elections Held.—All elections by the people shall be by ballots, and shall be concluded in in one day. A general election shall be held in the several counties on the first Tuesday after the first Monday in the year, 1931, and every four years thereafter.

Section 6226, Code, 1930.—Official Ballot: Expenses of Printing.—The ballots in all elections shall be printed and distributed at the public expense, and shall be known

as "official ballots". The expense of printing such ballots shall be paid out of the county treasury, except in municipal elections such expenses shall be paid by the respective cities, towns, and villages.

Section 635, Code, 1930.—Statement of Votes Sent to Secretary of State.—The Commissioners of election shall, within ten days after the election, transmit to the Secretary of State, to be filed in his office, a statement of the whole number of votes given in their county for each candidate for any office at the election; but the returns of every election for governor, lieutenant-governor, secretary of state, attorney-general, auditor of public accounts, state treasurer, state superintendent of education, land commissioner, insurance commissioner, and clerk of the Supreme Court, and other state or state district officers, shall each be made out separately, sealed together, and transmitted to the seat of government, directed to the secretary of state, and endorsed, the "vote for state officers", to be delivered by the secretary of state to the speaker of the House of Representatives at the next ensuing session of the Legislature. Constitutional amendments shall be voted for at the time fixed by the concurrent resolution. The election, whether held separately or with other elections, shall be conducted, in all respects, as required for elections generally. The returns shall be made by the election commissioners to the Secretary of State and shall be tabulated by him and submitted to each branch of the legislature, at the session next ensuing.

Section 6252, Code of 1930.—Duty of Secretary of State as to Returns, What Done in Case of Tie.—The Secretary of State, immediately after receiving the returns of an election, not longer than thirty days after the election, shall sum up the whole number of votes given for each candidate other than for state offices, ascertain the person or persons having the largest number of votes for each office, and declare such person or persons to be duly elected; and thereupon all persons chosen to any office at

the election shall be commissioned by the governor; but if it appear that two or more candidates for any district office where the district is composed of two or more counties, standing highest on the list, and not elected, have an equal number of votes, the election shall be forthwith decided between the candidates having an equal number of votes by lot, fairly and publicly drawn, under the direction of the governor and secretary of state.

Section 6277, Code of 1930.—Number of Representatives, Changes, How Elected.—Should an election of representatives in Congress occur after the number of representatives to which the state is entitled shall be changed, in consequence of a new apportionment being made by Congress, and before the districts shall have been changed to conform to the new apportionment, representatives shall be chosen as follows: In case the number of representatives to which the state is entitled be increased, then one member shall be chosen in each district as organized, and the additional member or members shall be chosen by the electors of the state at large; and if the number of representatives shall be diminished, then the whole number shall be chosen by the electors of the state at large.

Section 6231, Code of 1930.—Ballots What to Contain.—The ballot shall contain the names of all condidates who have been put in nomination, not less than fifteen days previous to the day of election, by the primary election of any political party. There shall be printed on the ballots the names of all candidates so nominated, whether the nomination be otherwise known or not, upon the written request of one or more of the candidates so nominated, or of any qualified elector who will make oath that he was a participant in the primary election, and that the person whose name is presented by him was nominated by such primary election. The commissioner shall also have printed on the ballot the name of any qualified elector who has been requested to be a candidate for any office, by a written petition signed by at least fifteen electors, for any beat or

municipal office in a town or village of less than three hundred inhabitants, or fifty qualified electors for any other office, and when the petition or request has been presented to said commissioner not less than fifteen days before the election; but if any candidate has been so nominated or has been so requested to become a candidate, less than fifteen days before the election, his name shall not be printed on the ballot.

Section 6234, Code, 1930.—Arrangements of Names on Ballots; Sample Ballots.—The arrangement of the names of the candidates, and the order in which the title of the various offices shall be printed, and the size, print, and quality of paper of the official ballot is left to the discretion of the officer charged with printing the official ballot; but the arrangement need not be uniform. It is the duty of the Secretary of State, with the approval of the Governor, to furnish the designated commissioner of each county a sample of the official ballot, the general form of which shall be followed as nearly as practicable; Provided that in all primary elections the names of the candidates for each office separately shall be arranged alphabetically.